

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

In re POLYURETHANE FOAM ANTITRUST LITIGATION)	
)	MDL Docket No. 2196
)	Index No. 10-MD-2196 (JZ)
This document relates to:)	
)	
ALL CASES)	
)	

**DEFENDANTS' MOTION TO VACATE AND SET ASIDE
RULE 41(a)(1) NOTICES OF VOLUNTARY DISMISSAL AND FOR OTHER RELIEF**

Defendants Carpenter Co. (sued as The Carpenter Company), Carpenter Canada Co., Carpenter Holdings, Inc., Domfoam International, Inc., E.R. Carpenter, L.P., Flexible Foam Products, Inc., Future Foam, Inc., FXI - Foamex Innovations, Inc., Hickory Springs Manufacturing Company, Mohawk Industries, Inc., Ohio Decorative Products, Inc., Valle Foam Industries (1995) Inc., Woodbridge Foam Corporation, Woodbridge Foam Fabricating, Inc., and Woodbridge Sales and Engineering, Inc. (collectively, "Defendants"),¹ by counsel, for the reasons set forth in the accompanying memorandum of law, hereby move for an order that (1)

¹ Defendants Inoac USA Inc., Crest Foam Industries, Inc., Plastomer Corporation, and Otto Bock Polyurethane Technologies, Inc. were not named as Defendants in any of the actions that have been voluntarily dismissed to date. However, they do not oppose the present Motion.

vacates and sets aside the notices of voluntary dismissal without prejudice, which were filed in a number of the consolidated cases in this MDL;² (2) re-instates those cases to the Court's docket as part of MDL 2196; and (3) modifies the current Case Management Order (A) to preclude any further voluntary dismissals without prejudice pursuant to Fed. R. Civ. P. 41(a)(1) without prior leave of Court or consent of Defendants, and (B) to condition any voluntary dismissal, whether with or without prejudice, on proper terms under Fed. R. Civ. P. 41(a)(2), including that dismissed Plaintiffs will be treated as parties for purposes of discovery.

In the alternative, should the Court be inclined to honor the voluntary dismissals, Defendants respectfully request that the Court deem each dismissal to be *with prejudice*.

² The cases in which such notices have been filed are: *Johs, et al. v. Hickory Springs Mfg. Co., et al.*, 1:11-pf-10003 (Dkt. # 118, 132) (notice filed May 4, 2011; ordered May 9, 2011); *Custom Carpets, Inc. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10034 (Dkt. # 148); *W. Carpet Ctr., Inc. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10035 (Dkt. # 149); *Pandolfi House of Carpets, Inc. v. Vitafoam, Inc., et al.*, 1:10-pf-10020 (Dkt. # 152) (notice filed on behalf of Pandolfi House of Carpets but designated as applicable to all actions); *Lackey, et al. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10021 (Dkt. # 153); *DeSitter Flooring, Inc. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10032 (Dkt. # 154); *HVA Bros., Inc., et al. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10028 (Dkt. # 155); *Columbia River Floor Covering v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10033 (Dkt. # 156); *Foam Empire, Inc. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10024 (Dkt. # 157); *Atl. Feather & Foam, Inc. v. Scottdel, Inc., et al.*, 3:10-pf-10001 (Dkt. # 159); *Abdinoor's Carpet Craft v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10015 (Dkt. # 162); *Alyanna Enters., Inc. v. Hickory Springs Mfg. Co., et al.*, 3:10-pf-10002 (Dkt. # 163); *R & W Carpets, Inc. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10037 (Dkt. # 164); *Jamestown Mattress Co., Inc. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10009 (Dkt. # 166); *Piazza's Carpet & Tile Shop, Inc. v. Hickory Springs Mfg. Co., et al.*, 1:10-pf-10008 (Dkt. # 167).

June 28, 2011

Respectfully submitted,

/s/ James H. Walsh

James H. Walsh
Howard Feller
Bethany Lukitsch
MCGUIREWOODS LLP
One James Center
901 East Cary Street
Richmond, VA 23219-4030
Phone: (804) 775-4356
Fax: (804) 698-2200
jwalsh@mcguirewoods.com
hfeller@mcguirewoods.com
blukitsch@mcguirewoods.com

/s/ Kendall Millard

Kendall Millard
BARNES & THORNBURG, LLP
11 South Meridian Street
Indianapolis, IN 46204-3535
Phone: (317) 231-7461
Fax: (317) 231-7433
kmillard@btlaw.com

/s/ Michael D. Mustard

Michael D. Mustard
BARNES & THORNBURG LLP
600 One Summit Square
Fort Wayne, IN 46802-3119
Phone: (260) 423-9440
Fax: (260) 424-8316
mmustard@btlaw.com

Counsel for Carpenter Co., E.R.

*Carpenter, L.P., Carpenter Holdings, Inc.
and Carpenter Canada Co.*

*Counsel for Flexible Foam Products, Inc.,
Ohio Decorative Products, Inc.*

/s/ Shepard Goldfein

Shepard Goldfein
Elliot A. Silver
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Four Times Square
New York, NY 10036
Phone: (212) 735-3000
Fax: (212) 735-2000
shepard.goldfein@skadden.com
elliot.silver@skadden.com

/s/ Edward G. Warin

Edward G. Warin
John P. Passarelli
Angela K. Wilson
KUTAK ROCK LLP
1650 Farnam Street
Omaha, NE 68102
Phone: (402) 346-6000
Fax: (402) 346-1148
edward.warin@kutakrock.com
john.passarelli@kutakrock.com
angela.wilson@kutakrock.com

*Counsel for Domfoam International, Inc.
and Valle Foam Industries (1995) Inc.*

Counsel for Future Foam, Inc.

/s/ Francis P. Newell

Francis P. Newell
Peter M. Ryan
COZEN O'CONNOR
1900 Market Street
Philadelphia, PA 19103
Phone: (215) 665-2118
Fax: (215) 665-2013
fnewell@cozen.com
pryan@cozen.com

/s/ Frank A. Hirsch, Jr.

Frank A. Hirsch, Jr.
Matthew P. McGuire
ALSTON & BIRD LLP
4721 Emperor Blvd.
Suite 400
Durham, NC 27703
Phone: (919) 862-2200
Fax: (919) 852-2260
frank.hirsch@alston.com
matt.mcguire@alston.com

*Counsel for FXI - Foamex Innovations,
Inc.*

/s/ Randall L. Allen

Randall L. Allen
Teresa T. Bonder
Erica F. Ghali
ALSTON & BIRD LLP
One Atlantic Center
1201 W. Peachtree St.
Atlanta, GA 30309
Phone: (404) 881-7000
Fax: (404) 881-7777
randall.allen@alston.com
teresea.bonder@alston.com
erica.ghali@alston.com

*Counsel for Hickory Springs
Manufacturing Company*

/s/ Daniel G. Swanson

Daniel G. Swanson
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Phone: (213) 229-6690
Fax: (213) 229-6919
dsawinson@gibsondunn.com

Cynthia Richman
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Phone: (202) 530-8500
Fax: (202) 530-9651
crichman@gibsondunn.com

Counsel for Mohawk Industries, Inc.

*Counsel for Woodbridge Foam
Corporation, Woodbridge Sales and
Engineering, Inc., and Woodbridge Foam
Fabricating, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2011, a copy of the foregoing Defendants' Motion to Vacate and Set Aside Rule 41(a)(1) Notices of Voluntary Dismissal and for Other Relief was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Bethany G. Lukitsch

Bethany G. Lukitsch
MC GUIREWOODS LLP
One James Center
901 East Cary Street
Richmond, VA 23219-4030
Phone: (804) 775-4711
Fax: (804) 698-2261
blukitsch@mcguirewoods.com

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